

K5LLSHNC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 KSNEIA SHNYRA *et al.*,

4 Plaintiffs,

5 v.

19 Civ. 2420 (GHW)

6 STATE STREET BANK and TRUST  
7 COMPANY, INC.,

Teleconference

8 Defendants.

9 -----x

10 New York, N.Y.  
11 May 21, 2020  
1:00 p.m.

12 Before:

13 HON. GREGORY H. WOODS,

14 District Judge

15 APPEARANCES

16 LUMEN LAW

17 Attorney for Plaintiffs

18 BY: MIKHAIL RATNER

19 NIXON PEABODY

Attorneys for Defendants

20 BY: DAVID S. ROSENTHAL

21 DAVID A. TAUSTER

K5LLSHNC

1 THE COURT: This is Judge Woods. I apologize for  
2 starting late. Let me say a few words of introduction at the  
3 outset. Give me a moment, please.

4 (Pause)

5 THE COURT: Good. So first a few words about the  
6 correct protocol. First, please state your names each time  
7 that you speak during the course of this conference. Do that  
8 regardless of whether or not you've spoken it previously.  
9 Second, please keep your phones on mute at all times when  
10 you're not speaking that's to keep us from hearing unnecessary  
11 background noise. So please keep your phones on mute. Third,  
12 I'm asking the court reporter to let us know if she has any  
13 difficulty in hearing or understanding anything that any of us  
14 say here today. So please don't be surprised if she speaks up.  
15 If she does, please do what she asks so that we can keep a  
16 clear record.

17 So with that, who do I have on the line for plaintiff?

18 MR. RATNER: Your Honor, Mikhail Ratner, for  
19 plaintiffs.

20 If you need me to spell my first and last name, it's  
21 M-i-k --

22 THE COURT: It's not necessary.

23 Who do I have on the line for defendants?

24 MR. TAUSTER: Good afternoon, your Honor.

25 You have David Tauster. And I believe you also have

K5LLSHNC

1 David Rosenthal from Nixon Peabody.

2 MR. ROSENTHAL: That's right. This is David  
3 Rosenthal. I am here.

4 THE COURT: Good. Thank you.

5 So first we're here for an initial pretrial  
6 conference. The agenda for the conference is straightforward.  
7 First I'm going to give you the opportunity to let me know if  
8 there are any facts or legal issues that you'd like to  
9 highlight for me. Second, we're going to discuss the process  
10 that we're going to be using to litigate the case going  
11 forward. So that portion of the conference I expect to look to  
12 the parties' proposed case management plan and scheduling order  
13 to provide the framework for our conversation. And I hope to  
14 discuss what, if anything, I can do to facilitate an amicable  
15 resolution of the case. So with that agenda at hand, let me  
16 turn first to counsel for plaintiffs.

17 What would you like to tell me about the case?

18 MR. RATNER: Your Honor, I think -- I hesitate to say  
19 anything more than what's written in the complaint and  
20 your Honor's decision on the motion to dismiss exhibited close  
21 to familiarity with the facts and circumstances of this case.  
22 If the Court would like, I can refresh the recollection of  
23 everybody.

24 But it's an unusual case in the sense of my client --  
25 the entire department that housed my client was disbanded to

K5LLSHNC

1 cover up a wrongful termination. And that, in essence, is the  
2 central elastic of this case: State Street disbanded suddenly  
3 a 17-person department. We allege that a good chunk of the  
4 folks, if not all of them, were subsequently offered jobs.  
5 Some of them actually were retained back; my three clients were  
6 the only ones who weren't. And it followed on the heels of a  
7 complaint made by the central player in this case, Dr. Ksenia  
8 Shnyhira, and of gender discrimination. And subsequently, her  
9 close colleague and another managing director of the unit,  
10 Alexander Reyngold, basically confirmed her complaint, stood up  
11 with her, and both were terminated. And a third person -- and  
12 my client -- Kenneth Walker, was also terminated and not  
13 offered a job back based on the fact that he was over 40. That  
14 is, in essence, what we have here, your Honor.

15 I have not seen anything from defendant by way of, you  
16 know, good business reason for terminating an entire department  
17 like that. In fact, up until the very -- pretty much a couple  
18 months until the department was disbanded, my clients,  
19 especially Dr. Shnyra and Mr. Reyngold, were bandied about as  
20 sort of paragons of success and commitment to the State Street  
21 defendant's business model. And all of a sudden, this  
22 aboutface that happened a couple months later, it was clearly  
23 tied to, you know, the events that precipitated the complaints  
24 by Dr. Shnyra.

25 So that's, in a nutshell, what this case is about,

K5LLSHNC

1 your Honor.

2 THE COURT: Okay. Thank you.

3 Let me just ask briefly about one issue raised in the  
4 letter submitted by the parties, which relates to the focus of  
5 your claims. Counsel for defendant points to the plaintiffs'  
6 failure to apply for the newly opened positions and points to  
7 well-supported jurisprudence that one must apply for a job in  
8 order to be -- in order to state a claim for having been denied  
9 that job.

10 Can you comment on that, and in particular on whether  
11 that is the focus of your claims here; in other words, the  
12 failure to hire?

13 MR. RATNER: Well, it's a combination of the factors  
14 that the entire department was disbanded suddenly and most of  
15 the folks were subsequently rehired -- or so we allege at  
16 least. My clients have some evidence to that effect already.  
17 My clients were actively discouraged -- we'll present  
18 evidence -- from doing anything in terms of trying to reinstate  
19 themselves within State Street. And I can't imagine there  
20 being anything that could possibly -- would prompt them to  
21 actively pursue employment with State Street after what had  
22 happened just, you know, weeks before the entire department was  
23 disbanded. My client, Dr. Shnyra, was so denigrated and so  
24 discouraged that she suffered, you know, an anaphylactic shock  
25 and was hospitalized. And there were other health issues that

K5LLSHNC

1 followed at or around the time that we're talking about.

2 But they did make an attempt to try to -- in emails  
3 themselves, I may add, your Honor -- that's something that  
4 we'll present in discovery. In the emails themselves, they  
5 repeatedly say, you know, We want to resolve this issue, we  
6 want to be good citizens to State Street. And after they were  
7 let go, the communication chain was cut immediately. So there  
8 really isn't anything by way of emails, I think, subsequent to  
9 that. The job postings were internal to State Street, and it  
10 actually didn't go outside of its own internal network to place  
11 these people back into positions that they pretty much occupied  
12 during the time that they were still with the department that  
13 was sacked.

14 So, yes, I understand the defendant's point that you  
15 have to apply for a job in order for you to claim that you were  
16 denied it, but in this case, I think what's happened is that  
17 the entire department was sacked, and then everybody was kind  
18 of quietly were placed -- were offered positions. My clients  
19 tried to do something about it even before the department was  
20 sacked, but, you know, subsequent to that, they didn't really  
21 aggressively pursue an employment opportunity in a way that  
22 drove them to the position that they find themselves right now.

23 THE COURT: Thank you. That's helpful.

24 Of course, the parties' positions will evolve as you  
25 seek it for the course of discovery in this case. At this

K5LLSHNC

1 point, I understand that plaintiffs are not principally  
2 pursuing this as a failure-to-hire claim but, rather, that the  
3 rehiring allegations are in support of the contentions that the  
4 termination of them was pretextual because other people were  
5 hired back. Good.

6 Anything else that you'd like to tell me, could  
7 counsel for plaintiffs, before I turn to counsel for defendant?

8 MR. RATNER: I just -- I think, your Honor, you'll  
9 find in this case that -- especially with Dr. Shnyra -- that  
10 it's an example of where, you know, discrimination at the  
11 workplace is really a public health issue as much as it is also  
12 a week-old nightmare. And she has suffered tremendously  
13 because of what has happened to her during the time that we're  
14 talking about. Other than that -- and that's why we're looking  
15 to present expert testimony from doctors, or at least in some  
16 form, go through discovery on this issue. There are some  
17 serious health issues that we have just -- I'm reluctant to  
18 talk about them right now at this point, but that will be  
19 whetted out through discovery.

20 THE COURT: Good. Thank you. Let me turn to counsel  
21 for defendant.

22 What would you like to tell me about the case?

23 MR. TAUSTER: Good afternoon, your Honor. This is  
24 David Tauster, Nixon Peabody.

25 I think, his description that this is a -- I think he

K5LLSHNC

1 said -- unique or odd case is apt, because we do think it is  
2 very odd and very unique that plaintiffs believe that they can  
3 support a discrimination claim where an entire department of  
4 individuals -- old and young, male and female, all races,  
5 etc. -- were discharged.

6 The plaintiffs were a part of State Street's group  
7 known as Enterprise Risk Advisory Services. They performed the  
8 kind of quantitative risk modeling for businesses that I could  
9 never hope to understand, but which is apparently somewhat  
10 commonplace. State Street at one point did look at this as a,  
11 you know, useful part of this operation. By the same token,  
12 however, all the risk modeling performed by this unit known as,  
13 ERAS, was all performed internally. I think they might have  
14 done one external project the entire time they existed. So  
15 realistically, this was not an revenue-generating sector, but  
16 rather, just an in-house service. Over time, State Street  
17 realized that it was not realizing the type of gains from  
18 having the type of services inhouse that it could have realized  
19 from farming them out to similar companies and, therefore,  
20 elected to eliminate the ERAS group.

21 Plaintiff's allegations about discrimination  
22 harassment before that happened, those are all baseless. You  
23 know, at the end of the day -- you know, plaintiffs' counsel  
24 has spoken at length about Dr. Shnyra -- Ksenia Shnyra,  
25 plaintiff here -- and to a certain degree Dr. Shnyra, went out



K5LLSHNC

1 of her way to be aggressive and abrasive to her colleagues, but  
2 needless to say, was never subjected to any form of  
3 discrimination, harassment, or anything of the sort during her  
4 employment. And frankly with respect to Plaintiffs Walker and  
5 Reyngold, their claims are completely absurd here. There's  
6 nothing really to support that Plaintiff Reyngold actively  
7 supported any complaints that were made by Dr. Shnyra. To the  
8 contrary, Reyngold complained, frankly, you know, that they  
9 were not protected activity; they were Reyngold complaining to  
10 the supervisor about why he wasn't making more money and being  
11 promoted. But needless to say, again, he was eliminated as a  
12 part of the universal reduction and not due to any complaints  
13 or anything of that sort. And Plaintiff Walker, frankly, does  
14 not allege that he made any complaints. He was hired into  
15 ERAS, he was discharged, and it's as simply as that. There's  
16 really nothing to his claim other than that he was hired when  
17 he was over 40, and he was fired when he was over 40.

18 So needless to say, State Street believes it has a  
19 very defensible position in this litigation. And while we  
20 understand that the Court believed that plaintiff stated a  
21 claim, State Street is very confident that it will prevail in  
22 this litigation whether at summary judgment or at trial.

23 THE COURT: Good. Thank you very much.

24 So let's talk about discovery here. I've reviewed the  
25 parties' proposed case management plan and scheduling order.

K5LLSHNC

1 I'd like to hear from the parties about your expectations for  
2 discovery here. I'm interested in information about the kind  
3 of issues that will inform my assessment of the deadlines that  
4 the parties have proposed. That's particularly the case here  
5 where the parties have suggested a relatively extended  
6 discovery schedule. So I'd just like to make sure that I  
7 understand what it is that you expect to be doing and how it is  
8 that you expect to complete that work within the time frame  
9 that you have proposed. So let me begin first with counsel for  
10 plaintiffs.

11 Counsel, what can you tell me about your expectations  
12 for discovery here?

13 MR. RATNER: Well, your Honor, I think we'll be  
14 seeking documents related to my client's employment at State  
15 Street, as well as any information related to ERAS department  
16 group, leading up to its disbandment and subsequent. So kind  
17 of a short window in which we'll be asking for documents that  
18 are beyond sort of the personnel files.

19 And then we plan, on the basis of the documents that  
20 we do receive, to depose several members of -- you know,  
21 supervisors to the extent that they still obviously are under  
22 State Street control. And then if necessary, we will, you  
23 know, look to subpoena them otherwise for sort of instrumental  
24 in the misconduct that we're talking about here; some of them  
25 named already in the complaint. And that majority in the

K5LLSHNC

1 complaint already as the officers and directors who were direct  
2 supervisors who were maybe ERAS, but still played an integral  
3 part in this case. And we will be seeking to present evidence  
4 of damages to my clients as well.

5 The other thing -- the elephant in the room,  
6 your Honor, if I may say so -- is the fact that we're going  
7 through these extraordinary times. I am not against --  
8 obviously documents exchange will take place electronically. I  
9 can't imagine -- even if it's an enormous amount of data and  
10 documents, we'll figure out how to exchange things  
11 electronically, because right now I don't have access to my  
12 office, for example, and I'm not sure when that's going to  
13 change. And I suggest we address these issues, as they've done  
14 now, and not worry about what's happening a month or two from  
15 now.

16 And the other thing is depositions and litigation  
17 practice. I have scheduled several depositions. I haven't  
18 taken them over the Zoom, but, you know, I understand that  
19 that's something that's, you know, going to be common practice  
20 until at least the time that we can safely assemble and  
21 whatnot. And especially because some of the parties -- not  
22 parties, pardon me -- witnesses are located in Boston, it may  
23 be easier for us to do it this way. But I will, of course,  
24 look to the Court for guidance as to ultimately what's going to  
25 happen here.

K5LLSHNC

1 So that's what my view of the case is and procedure.

2 THE COURT: Good. Thank you.

3 Let me ask briefly, counsel for plaintiff, about your  
4 expectations for expert discovery here. You've mentioned, for  
5 example, serious medical consequences of the alleged conduct by  
6 defendant here.

7 What can you say about your expectations for expert  
8 discovery?

9 MR. RATNER: I think what I'm looking to do is to  
10 present evidence of how the stress of what Dr. Shnyra was going  
11 through had caused -- had contributed significantly seriously  
12 to several physical conditions that she had suffered from,  
13 health issues. And, you know, there's no question that she had  
14 them and she has them, and they came about around the time --  
15 she didn't have anything prior to that. So I will tie in the  
16 timeline with the diagnosis and the sort of subsequent  
17 development of these conditions, you know, to the issue of to  
18 what extent the enormous stress had contributed to development  
19 of these conditions.

20 THE COURT: Thank you. Good. I appreciate that.  
21 Thank you.

22 Counsel for plaintiffs, have the parties discussed ESI  
23 and, in particular, issues such as search terms and custodians?

24 MR. RATNER: No, your Honor, we have not discussed  
25 these as of yet.

K5LLSHNC

1 THE COURT: Good. Thank you.

2 Let me turn to counsel for defendant.

3 Counsel, what can you tell me about your expectations  
4 for discovery here?

5 MR. TAUSTER: Thank you, your Honor. This is David  
6 Tauster from Nixon Peabody.

7 Plaintiff, I think accurately summarized some of the  
8 challenges that we expect to face in discovery here. Again, I  
9 don't need to remind everyone that we're dealing with a global  
10 pandemic. And, you know, as plaintiff's counsel noted, we have  
11 the defendant primarily headquartered in Boston, plaintiffs  
12 headquartered in New York.

13 What I can see being some of the challenges here  
14 warranting a bit longer discovery schedule, and even -- taking  
15 a step back here, I think it's worth noting that it's somewhat  
16 obvious that this is a very long and dense complaint. I know  
17 plaintiff indicated that he's only focused on, you know,  
18 immediately proceeding the discharges and thereafter, but there  
19 are allegations in this complaint that go back some time in  
20 terms particularly of the disparate treatment allegations and  
21 things of that sort.

22 So certainly document collection is going -- you know,  
23 in and of itself would have been a challenge. And that's  
24 before factoring in that this collection will have to have been  
25 completely remotely. So we are going to have to deal with

K5LLSHNC

1 that.

2 We suspect that there may be some discovery --  
3 considerable discovery that plaintiffs will be seeking that we  
4 will be resisting. As we brief the Court in our motion to  
5 dismiss, we believe that there are multiple allegations in this  
6 complaint that should have been stricken. We understand the  
7 Court disagrees, but by the same token, we will likely resist  
8 discovery, you know, to the extent that plaintiffs intend to  
9 seek discovery relating to those issues, completely unrelated  
10 claims of race discrimination, things of that sort. So we can  
11 see some challenges arising just as we get through the exchange  
12 of written discovery, processing of documents, etc., and then  
13 ultimately culminating in depositions.

14 Obviously, as plaintiff's counsel pointed out, remote  
15 depositions are going to become an increasing reality in the  
16 legal practice and, who knows, they may take over and become  
17 the dominant means of taking depositions. By the same token, I  
18 will say that building in extra time into the schedule, such as  
19 the parties can get to the poll when they're taking  
20 depositions, it is my hope -- and maybe I'm just way too  
21 optimistic, but perhaps we might be able to take the  
22 plaintiffs' deposition in person just because I find that helps  
23 in terms of assessing demeanor and things of that sort.

24 So ultimately, even if there was not a pandemic, I  
25 think that this might be the type of somewhat complex case that

K5LLSHNC

1 would warrant more time to complete discovery. But certainly,  
2 given the current global circumstances, we would appreciate the  
3 Court so ordering of the case management plan so we can have  
4 the time we need rather than having to come running back to the  
5 Court and ask for more time.

6 Thank you, your Honor.

7 THE COURT: Thank you very much.

8 So first, counsel, thank you for your comments.  
9 Second, I've reviewed the proposed deadlines in the proposed  
10 case management plan and the scheduling order in light of your  
11 comments. And I believe that, with one small exception, the  
12 deadlines that the parties have proposed are acceptable. They  
13 are reasonable and provide sufficient time for the parties to  
14 complete whatever necessary to litigate this case.

15 Let me begin with the first small exception. That  
16 relates to paragraph 7F. I believe that the date needs to be  
17 advanced to October 18, just one day from the current deadline,  
18 in order to give you the full 30 days to respond to requests to  
19 admit within the discovery period. So I propose to modify  
20 paragraph 7F, to give you that full 30 days prior to the  
21 November 17 date for completion of fact discovery.

22 Is that modification acceptable to you, counsel for  
23 plaintiffs?

24 MR. RATNER: Yes, your Honor.

25 THE COURT: Good. Thank you.

K5LLSHNC

1 Counsel for defendant?

2 MR. TAUSTER: Your Honor, I just want to note that the  
3 reason we went with October 19th rather than the 18th is that  
4 October 18th is a Sunday.

5 THE COURT: Understood.

6 So let's push it even -- let's leave it as the 18th.  
7 I hope that you'll do it before the 18th --

8 MR. TAUSTER: Fair enough, your Honor.

9 THE COURT: -- so that you don't get caught up with  
10 that. Thank you, counsel. Good.

11 So let me say a few words about the case management  
12 plan and scheduling order just to inform how it is that you  
13 approach the issues raised.

14 First, you should exchange your HIPAA-complaint  
15 medical records releases no later than the date that is  
16 specified in the case management plan. Indeed, I would  
17 recommend that they be provided sooner than that if possible.  
18 As I understand it, based on the proffers by counsel here and  
19 the facts alleged in the complaint, plaintiff is putting in  
20 issue her medical condition and is arguing that the results of  
21 the alleged misconduct have exacerbated previously existing  
22 medical conditions. That appears to put at issue her medical  
23 history with respect to those issues, but may underscore those  
24 claim damages. So I expect that the defendants will want and  
25 will seek records releases for the relevant treatment



K5LLSHNC

1 providers. I direct you to provide those records releases by  
2 the date specified in the case management plan. That can be a  
3 bottleneck. I've heard from others that that can particularly  
4 be a bottleneck in the face of the pandemic, where medical  
5 professionals may have other better things to do than providing  
6 documents in connection with litigation. So I strongly  
7 encourage you to take care of that issue promptly so that it is  
8 not a bottleneck. Please focus on that.

9           The second thing that I want to highlight is that I  
10 believe that these deadlines are reasonable and that they  
11 provide a sufficient time for the parties to complete  
12 discovery. I want to highlight that the deadlines are real  
13 deadlines and that they are, as written, deadlines for  
14 completion of discovery. So, for example, paragraph 7A says  
15 that "all fact discovery shall be completed no later than  
16 November 17, 2020." That word, "completed," shows my  
17 expectation that discovery will be completed by that date.  
18 "Completed" means no more of it after that date. So please  
19 keep that general rule in mind as you're conducting discovery.  
20 There are a number of corollaries that flow from that general  
21 rule. I'm going to highlight two of them right now, but there  
22 are others which I'll leave for you to extrapolate on your own.

23           The first that I want to highlight is that, because  
24 this is a real deadline and a deadline for completion of  
25 discovery, you should not horde discovery disputes until late

K5LLSHNC

1 in the discovery period. Instead, if there is a discovery  
2 dispute, you should bring it to my attention promptly if you're  
3 unable to resolve it so that I can help you resolve it, so that  
4 discovery will be completed by the deadline for completion of  
5 fact discovery.

6 If there is a discovery dispute that you sit on until  
7 late in the discovery period, such that you cannot get used  
8 information during the discovery period, you should not expect  
9 that I will compel your adversary or third party to produce the  
10 information. That's because my expectation is that you  
11 complete discovery by this date. So if you choose to sit on  
12 your rights waiting for time to pass, you should expect that  
13 I'll hold you to the consequences of that decision. You should  
14 not expect that I will extend this deadline to permit to you  
15 litigate discovery disputes, because it's not a deadline for  
16 litigation about discovery, it's the deadline for completion of  
17 discovery.

18 The second corollary that I want to highlight is  
19 simply the fact that these deadlines and meeting them will  
20 require that you take into account the fact that they are  
21 deadlines that you're scheduling a request for information and  
22 depositions. Just to give you a simple example of what I mean:  
23 Here, depositions can be completed up through and including  
24 October 30th, 2020, and that is fine. Understand, however,  
25 that to the extent that you defer a deposition until late in

K5LLSHNC

1 the discovery period will simply mean that you'll have less  
2 time to do followup discovery with respect to any information  
3 that you might glean during the depositions or in response to a  
4 late-served request for information. So keep that in mind both  
5 as you are scheduling requests for information and depositions  
6 and as you are choosing how to respond to failures by your  
7 adversary to respond timely to previously propounded requests  
8 for information. Good.

9 So the other thing I want to highlight is that while  
10 all of these are real deadlines, I think the deadline in  
11 paragraph 8(c) are worthy of particular note. That's the  
12 paragraph that requires disclosure of expert disclosures as  
13 required under Rule 26(a)(2). There are a couple things that I  
14 want to highlight about this paragraph:

15 First, the paragraph requires that you provide all of  
16 the required disclosures under Rule 26(a)(2) by the date  
17 specified. It is not sufficient for you, for example, to  
18 provide merely your expert's name by the date specified here.  
19 Instead, you must provide one hundred percent of the  
20 disclosures required under the rules by that date. So her  
21 name, her report, her list of prior testimony, all of the  
22 things required under the rule have to be disclosed. Look at  
23 the rule to see what must be disclosed and prepare to provide  
24 all of that by the specified date. If you fail to provide all  
25 of those disclosures by the relevant date, you should not

K5LLSHNC

1 expect to hear an expert will be permitted to provide testimony  
2 or other evidence in the case.

3 The second thing I want to highlight about this  
4 paragraph is the fact that under the federal rules, there are  
5 experts that give reports and there are experts that don't give  
6 reports. They are both experts, however. I'm going to refer  
7 to them now as report-giving and non-report-giving experts.  
8 Somebody like a treating physician may testify without giving a  
9 report, but the scope of their testimony is substantially  
10 limited in the absence of a report. So if you conclude that an  
11 expert need not provide a report, please think carefully about  
12 two things: One, remember that the non-report-giving expert  
13 still must disclose information under Rule 26(a)(2). If you  
14 fail to provide the requisite disclosures for a  
15 non-report-giving expert by the date specified in paragraph  
16 8(c), that expert too will, you should expect, not be permitted  
17 to provide evidence or testimony in the case.

18 Second, for any person who is a treating physician or  
19 other non-report-giving expert, you should think about what the  
20 testimony is that you wish for her to provide well in advance  
21 of the disclosure deadline in paragraph 8(c). I suggest that  
22 simply because if you fail to provide an expert report for that  
23 expert, then her testimony will be limited to that which is  
24 permitted in the absence of a report. So please be mindful of  
25 that fact as you're deciding whether a report should be

K5LLSHNC

1 provided for any given expert witness. Again, if you fail to  
2 provide a report, you should expect that her testimony will be  
3 limited to that as permitted in the absence of a report. You  
4 should not expect that I'll let you fill in the gaps after the  
5 fact by providing a late report.

6 Good. So I'll issue this order. I'll grant  
7 extensions of the deadline here, but only for good cause shown.  
8 I do scrutinize requests to ensure that there is good cause, so  
9 don't expect that I'll grant an extension because the parties  
10 agree to one, for example. Similarly, bear in mind that my  
11 expectation is that you'll make professional judgments about  
12 the amount of resources that you want to invest in this case.  
13 So if you choose to spend time on other cases instead of this  
14 one, you shouldn't expect that that will give rise to a finding  
15 of good cause by the Court. Instead, you may find that I will  
16 ask you to live with the consequences of your decision about  
17 what you want to focus your energies on. So I'm giving you  
18 this resource. If you choose to use it poorly, you should not  
19 expect that I will rescue you from that decision by extending  
20 the deadlines. I will scrutinize the requests and ensure that  
21 there is good cause.

22 Now, while -- as I'm about to say -- I hope that the  
23 parties will work to resolve this case amicably, my expectation  
24 is that your efforts to resolve the case amicably will happen  
25 in parallel with your efforts to litigate the case in

K5LLSHNC

1 accordance with the schedule that will be set forth in the case  
2 management plan.

3 Now, there was commentary earlier about remote  
4 depositions. My hope is that the parties will confer about  
5 that. The rules provide two means for remote depositions: One  
6 is for the parties to agree to it. Otherwise, the Court can  
7 permit depositions upon motion by a party. Many of my  
8 colleagues, you should know, have standing orders that, as a  
9 result of the pandemic, basically authorize all depositions to  
10 take place remotely by Zoom or whatever the system may be. I  
11 have not done that, but I've heard several motions to permit  
12 remote depositions. My hope is that the parties will work  
13 together to develop a proposal with respect to those. If for  
14 any reason, the parties do not agree to remote depositions for  
15 any given witness, I invite you to bring it to my attention so  
16 that I can, as described in the rule on motion, make a  
17 determination regarding whether or not when it's appropriate.

18 I strongly encourage the parties to talk promptly  
19 about ESI-related issues, particularly custodians and search  
20 terms that can be an issue. And I encourage you to focus on  
21 that at the outset of the discovery process, particularly as  
22 you're collecting information that can be collected remotely.

23 Good. So I'll enter this case management plan with a  
24 single modification no later than today or tomorrow. And that  
25 will govern the parties' conduct going forward.

K5LLSHNC

1 I should ask whether or not there's anything that I  
2 can do to help the parties resolve the case amicably. Please  
3 let me know if there is. I'm happy to do something that could  
4 be helpful for you. You know, the Court has two annexed  
5 mediation programs and we have four magistrate judges who  
6 dedicate a substantial portion of their time to help parties  
7 settle cases. We also have a mediation program which is  
8 staffed by volunteer mediators with experience in the area.  
9 I'd be happy to refer you to either of those resources. It's  
10 not clear to me that the parties are ready to engage in that  
11 kind of conversation at this point, but it's always beneficial  
12 in my view to have an open line of communications about a  
13 potential resolution of the case.

14 Let me know, counsel, if you would, if you think it  
15 would be helpful for me to refer you to either of those options  
16 now. If not now, please be aware that I'm happy to make them  
17 available to you in the future if your assessment changes. Let  
18 me turn first to counsel for plaintiffs.

19 Counsel, is there anything I can do at this time to  
20 help the parties resolve the case?

21 MR. RATNER: Well, your Honor, I think what you said  
22 kind of applies to this case and as we see it now, and that is  
23 that we're pretty far apart. And I'm hoping that the discovery  
24 will narrow this gap on one side or another. And, you know,  
25 I've had opportunities to settle cases with the help of a

K5LLSHNC

1 myriad of magistrate judges in this district. And so if the  
2 opportunity comes in this case, I will not hesitate to seek a  
3 referral, your Honor.

4 We're not -- I mean, it does say in the order we're  
5 not against private mediation, but that's a cost that will be  
6 incurred. So I'm happy to share that. And, you know, that the  
7 Court provides a mediation program and it still is working, you  
8 know -- but my preference first would be to try to get it over  
9 to a magistrate judge, your Honor.

10 THE COURT: That's fine. Please let me know in the  
11 future if you think it would be helpful. Yes, our mediation  
12 program is still working. I'm informed that it is still  
13 vibrant. Good. I think that's all that I wanted to take up  
14 here.

15 Anything else that we need to discuss before we  
16 adjourn, first, counsel for plaintiffs?

17 MR. RATNER: No, your Honor.

18 THE COURT: Thank you.

19 Counsel for defendant?

20 MR. TAUSTER: Your Honor, this is David Tauster.

21 Nothing further from defendants. Thank you very much  
22 for your time and attention today.

23 THE COURT: Thank you. My pleasure.

24 I think there's one thing that I'm going to mention,  
25 although I don't think I need to. But it's occurred to me, so



K5LLSHNC

1 I may as well.

2 I'm presiding over another case also involving State  
3 Street. It does not involve claims of discrimination. It's a  
4 trademark case involving The Fearless Girl statute. It has, as  
5 far as I can tell, no impact. I see no basis to recuse myself  
6 or anything as a result. But I thought that the parties might  
7 be interested in knowing that fact, so I am letting you know  
8 that fact.

9 MR. RATNER: Thank you, your Honor.

10 THE COURT: Good. Thank you, all.

11 \*\*\*\*\*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25